STATE OF MICHIGAN

COURT OF APPEALS

ZIAD ZAGHATI, Plaintiff-Appellee,	UNPUBLISHED March 2, 2001
v	No. 216514 Wayne Circuit Court
CLASSIC HOME BUILDERS, INC., Defendant-Appellant.	LC No. 95-516761-CH

Before: Markey, P.J., and McDonald and K. F. Kelly, JJ.

PER CURIAM.

This case returns to this Court following a previous appeal[1] and a remand for fact-finding by the circuit court. Defendant, Classic Home Builders, Inc., appeals by leave granted the circuit court's denial of its motion for judgment notwithstanding the verdict, motion for new trial and denial of entry of a new or amended judgment. We vacate the circuit court's findings of fact and the orders appealed and remand for entry of a judgment consistent with this opinion.

In 1993, plaintiff, Ziad Zaghati, asked Bruce LaNoye[2] if his company, defendant, Classic Home Builders, Inc., would build a home in a Plymouth subdivision where LaNoye had built other homes. Plaintiff, however, did not choose a model home like those LaNoye already had built in the Plymouth subdivision. Instead, plaintiff preferred "the Wynston," a model home he had seen in Troy. LaNoye agreed to build a home like the Wynston and signed a purchase agreement with plaintiff in November 1993. Construction began in January 1994. Throughout the building process, plaintiff requested several extra amenities. When plaintiff did not pay the $51,005 bill that LaNoye sent for those amenities, LaNoye ceased construction of the home in the fall of 1994 and sought to void the agreement. Plaintiff then brought the instant suit for specific performance.

[1] *Zaghati v Classic Home Builders, Inc*, unpublished opinion per curiam of the Court of Appeals, issued May 19, 1998 (Docket No. 197908).

[2] Defendant Bruce LaNoye's motion for directed verdict was granted at trial and he is not a party to the instant appeal.

At trial, the advisory jury found that the final contract amount on April 7, 1994 was $303,000, which was the initial contract price. It did not include the $51,005 of extras, or the $25,000 defendant contended plaintiff already had paid for certain extras in March 1994. The circuit court adopted the jury's finding that the price was $303,000 and ruled that plaintiff had paid $225,000 which left a balance of $78,000. Because completion costs would be $90,000, the circuit court determined that defendant owed the $12,000 difference to plaintiff. The circuit court then denied defendant's motion for JNOV, for entry of new or amended judgment or, in the alternative, new trial. Defendant appealed by right from that order. In 1998, this Court remanded the case to the circuit court for fact-finding because the circuit court had not made findings of fact independent from those of the advisory jury.[3]

In its findings of November 24, 1998, the circuit court indicated that the parties had agreed upon final specifications for the home on April 7, 1994, but had not agreed upon additional charges beyond the original contract price of $303,000. The court found as a matter of fact that the contract was not complete until the parties had agreed upon the specifications and the blueprints. The court noted that although defendant alleged that plaintiff had agreed to pay for extra items, testimony from plaintiff and other witnesses contradicted that assertion. The court found that defendant had breached the contract and owed $12,000 to plaintiff.

In a suit for specific performance, this Court reviews the findings of fact for clear error and reviews the ultimate determination de novo. *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). See, also, *Cipri v Bellingham Frozen Foods, Inc (After Remand)*, 235 Mich App 1, 9; 596 NW2d 620 (1999). Because this Court is left with the conviction that a mistake was committed, it declines to accept the findings made by the circuit court. Rather, a thorough review of the record below indicates that several key findings of fact conflict with the testimony and/or documents at trial. We decline to remand this case for additional factfinding as it has been pending since 1995 and because a final resolution would better serve the parties and better utilize limited judicial resources.

Where, as in this case, a party seeks specific performance, the party must show that enforcement of the promise is necessary to avoid injustice. *Giordano v Markovitz*, 209 Mich App 676, 680; 531 NW2d 815 (1995). Plaintiff seeks this equitable remedy against defendant-builder. Where one party seeks an equitable remedy against a builder and circumstances indicate that equity requires that the builder be paid for that work, the party seeking equity must first do equity by compensating the builder. *Republic Bank v Modular One LLC*, 232 Mich App 444, 453-454; 591 NW2d 335 (1998). We see no injustice in awarding the home to plaintiff, provided he first compensates defendant with proper payment for the work.

Plaintiff seeks to enforce the parties' contract, even though the parties disagree about the contract's scope and its terms. The principal goal in contract interpretation is to honor the intent of the parties. *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349-350; 605 NW2d 360 (1999). The contract at issue did not contain all of the necessary terms and conditions when signed, however, because no blueprints or specifications were available. Without blueprints or

[3] See footnote one, *supra*.

definite specifications, the 1993 agreement was not enforceable on its face. Plaintiff agrees that the 1993 agreement was not enforceable, but contends that the April 1994 specifications made it complete. We cannot agree. Missing from those specifications is the price component, which the contract itself requires.

Both sides urge this Court to accept their own parol evidence, but to discount the other party's evidence. Parol evidence is not admissible to vary a clear and unambiguous contract, but may be admissible to show the existence of an ambiguity and to clarify the meaning of an ambiguous contract. *Meagher v Wayne State University*, 222 Mich App 700, 722; 565 NW2d 401 (1997). Prerequisite to application of the parol evidence rule is a finding that the parties intended the contract to be a complete expression of their agreement. *In re Skotzke Estate*, 216 Mich App 247, 251; 548 NW2d 695 (1996). Parol evidence is admissible to establish the full agreement of the parties where the writing purporting to express their intent is incomplete. *Id*. at 251-252. Given the facts in this case, parol evidence is admissible to establish the full agreement of the parties.

Plaintiff testified that LaNoye assured him that the extras would be free provided he made advance payments. That testimony is contradicted by plaintiff's March 1994 payment of $75,000, $25,000 of which plaintiff admitted was for extras. That testimony also is contradicted by testimony from the salesperson and the window contractor, both of whom told plaintiff that the extras would not be free. Further, LaNoye himself disputes that testimony. Defendant, on the other hand, provides LaNoye's testimony that plaintiff gave assurances that he would pay for the extras. LaNoye's testimony is supported, albeit indirectly, by the salesperson's testimony that the parties discussed the payment of extras, by plaintiff's March 1994 payment of $25,000 and by the window contractor, who cautioned plaintiff that the upgraded window package came with an upgraded price.

Therefore, this Court does not find plaintiff's argument that he should be awarded the home for $303,000 convincing or sufficiently supported by evidence or testimony. Nonetheless, this Court cannot completely reward defendant and thereby condone LaNoye's practice to do business "on a handshake" given that such a practice gave rise to the instant suit and severely impeded a thorough record review. Defendant's failure to produce at trial receipts and independent documentation to support the calculations also hampered resolution of this case.

Although the parties contest several extra amenities, defendant named three specific items in its brief that it believes were outside the contemplation of the parties and thus comprise extras for which plaintiff should pay: the window package, the cabinets and the air conditioner. At trial, the window contractor testified that the difference between the initial window package and the upgrade was $6,656. As to the cabinets, which defendant asserted cost an additional $10,763, plaintiff admitted that his cabinets had been upgraded and that testimony was supported by that of the salesperson. The only support for the air conditioner, however, a note from LaNoye. Without additional documentation or supporting testimony, we are unable to award the air conditioner price to defendant, but award the above-listed amounts for the remaining two items.

In sum, the record reflects that the parties agreed in March 1994 that the purchase price of the home would be $328,000 – the initial $303,000 plus $25,000 extra for the larger basement and the brick exterior. Further, the facts show that the parties agreed in April 1994 to additional

specifications, but did not agree on final prices for those specifications. Consequently, equity demands that plaintiff be awarded the home, but also is responsible for paying for certain of the extras as indicated in this opinion.

This case is remanded to the trial court for entry of a judgment consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Gary R. McDonald
/s/ Kirsten Frank Kelly